

**SUMMARIZED MINUTES  
SCOTTSDALE CITY COUNCIL  
TUESDAY, MARCH 8, 2005**



**CITY HALL KIVA  
3939 N. DRINKWATER BOULEVARD  
SCOTTSDALE, AZ 85251**

**CALL TO ORDER**

Mayor Manross called to order a Regular Meeting of the Scottsdale City Council on Tuesday, March 8, 2005 in the Kiva, City Hall, at 5:01 P.M.

**ROLL CALL**

Present: Mayor Mary Manross  
Vice Mayor Betty Drake  
Council Members Wayne Ecton, W.J. "Jim" Lane,  
Robert Littlefield, Ron McCullagh, and Kevin Osterman

Also Present: City Manager Jan Dolan  
City Attorney Joseph Bertoldo  
City Clerk Carolyn Jagger

**PLEDGE OF ALLEGIANCE** – Councilman McCullagh

**INVOCATION** – Pastor Darrell McDaniel, Trinity Alive Assembly of God Church

**PRESENTATIONS/INFORMATION UPDATES**

**Boards, Commissions, and Task Force Nominations** (Note: Interviews and Appointments Scheduled for March 22, 2005)

Historic Preservation Commission (1) – Lisa Loss was nominated  
Human Relations Commission (1) – Jacob Bouie, Michele Culver, and Michael Nueman were nominated  
Parks and Recreation Commission (1) – Shelly Anderson and Glenn Shearer were nominated  
Scottsdale Pride Committee (1) – Judy Snyder was nominated and, having already been interviewed, was appointed to the Scottsdale Pride Committee.  
Transportation Commission (1) – Mark Gilliland was nominated

**PUBLIC COMMENT**

**Clint Frederick**, 27622 N. 78<sup>th</sup> Street, 85262, discussed GLO abandonments in relation to trails, and urged that signage be placed on trails prohibiting motorized vehicles.

**Tony Nelssen**, no address given, spoke against motor vehicles on trails, and requested Council act on a previous request to designate three additional roadways as scenic corridors.

**Michael Fernandez**, 4338 N. Scottsdale Road, 85251, commented on trash and rat problems from a neighboring property and thanked Council and staff for their help in addressing this problem.

**Sean Tierney**, 6120 N. 77<sup>th</sup> Pl, 85250, spoke as to the Paradise Valley Water Treatment Facility water reservoirs located along Cattle Track Road, concerns about this being a flood plain area where there are health and safety issues, and advised legal action will be pursued.

## MINUTES

**REGULAR MEETINGS**  
February 22, 2005

**WORK STUDY SESSIONS**  
February 15, 2005

COUNCILMAN MCCULLAGH MOVED FOR APPROVAL OF THE WORK STUDY MINUTES OF FEBRUARY 15, AND THE REGULAR MEETING MINUTES OF FEBRUARY 22, 2005.  
COUNCILMAN ECTON SECONDED THE MOTION, WHICH CARRIED 7-0.

## CONSENT AGENDA

## ITEMS 1 - 17

### 1. Bungalow Bar & Grill (Restaurant) Liquor License

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for an existing location that previously operated as Bakers Square Restaurant.

**Location:** 4360 N. Scottsdale Road

**Reference:** 4-LL-2005

**Staff Contacts:** Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov); Connie Padian, Customer Service Chief Officer, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

Councilman Ecton noted he would approve this series 12 liquor license, but would oppose any attempt in the future to change the license to a series 6.

### 2. Scottsdale Kosher Market (Beer and Wine Store) Liquor License

**Request:** Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 10 (beer and wine store) liquor license for a new store.

**Location:** 10211 N. Scottsdale Road

**Reference:** 5-LL-2005

**Staff Contacts:** Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov); Connie Padian, Customer Service Chief Officer, 480-312-2664, [cpadian@scottsdaleaz.gov](mailto:cpadian@scottsdaleaz.gov)

### 3. Santa Catalina Temporary Turn-around Abandonment

#### Requests:

1. Abandon portions of a temporary turn-around public right-of-way.
2. Reserve a drainage easement over a portion of the turn-around area.
3. Adopt Resolution No. 6637 vacating and abandoning a public right-of-way.

**Location:** 7818 E. Santa Catalina Drive

**Reference:** 4-AB-2004

**Staff Contacts:** Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov); Randy Grant, Chief Planning Officer, 480-312-7995, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)

**4. 129th Street Abandonment**

**Requests:**

1. Abandon 40 and 20 feet of dedicated roadway for 129<sup>th</sup> Street.
2. Abandon 33 feet of General Land Office (GLO) easement along 129<sup>th</sup> Street.
3. Reserve 5' for a public trail easement at Gold Dust Avenue.
4. Adopt Resolution No. 6599 vacating and abandoning a public right-of-way.

**Location:** 12890 and 12932 E. Gold Dust Avenue, 12875 E. Cochise Road

**Reference:** 17-AB-2004

**Staff Contacts:** Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov); Randy Grant, Chief Planning Officer, 480-312-7995, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)

**Lyle Wurtz**, 6510 E. Palm Lane, 85257, read comments into the record from Leon Spiro in opposition to this abandonment request.

**5. Shadey O's Conditional Use Permits**

**Request:** Consider conditional use permits for a bar and live entertainment use in an existing shopping center located at 10893 N. Scottsdale Road (northeast corner of Scottsdale Road and Shea Boulevard) with Highway Commercial District (C-3) zoning.

**Location:** 10893 N. Scottsdale Road

**Reference:** 38-UP-2004 and 39-UP-2004

**Staff Contacts:** Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov); Randy Grant, Chief Planning Officer, 480-312-7995, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)

**6. Construction Services Contract for Citywide Paving, Concrete and Storm Drain Work**

**Request:** Authorize Job Order Contract (JOC) No. 2005-035-COS with Nesbitt Contracting Company for Citywide paving, concrete and storm drain work.

**Staff Contact:** Al Dreska, Municipal Services General Manager, 480-312-5555, [adreska@scottsdaleaz.gov](mailto:adreska@scottsdaleaz.gov)

**7. Intergovernmental Agreement (IGA) with the City of Phoenix for Improvement and Maintenance of Scottsdale Road between Frank Lloyd Wright Boulevard/Bell Road and the Loop 101 Freeway**

**Request:** Approve Resolution No. 6636 and IGA 2005-028-COS with the City of Phoenix for cost sharing and establishing maintenance responsibilities for Scottsdale Road from Frank Lloyd Wright Blvd./Bell Road to the Loop 101 Freeway.

**Related Policies, References:**

- Engineering Services Contract No. 2002-144-COS with Dibble and Associates for the design of Scottsdale Road Improvements from Frank Lloyd Wright Blvd. to Thompson Peak Parkway was approved by City Council on November 18, 2002.
- Construction Contract No. 03PB101, Union Hills to Loop 101 Freeway, was approved by City Council on November 16, 2004.

**Staff Contact:** Mary O'Connor, Transportation General Manager, 480-312-2334,  
[moconnor@scottsdaleaz.gov](mailto:moconnor@scottsdaleaz.gov)

**8. Intergovernmental Agreement (IGA) with Maricopa County for Special Transportation Services for Disabled Passengers**

**Request:** Adopt Resolution No. 6619 to authorize a one-year IGA No. 2005-016-COS with Maricopa County for the provision of Special Transportation Services (STS). The projected cost of purchasing these services from Maricopa County for fiscal year 2004/05 is \$60,903. Recognizing that this service benefits City residents, Scottsdale has supported STS since 1987. STS will provide a projected 4,344 free trips to City residents under the fiscal year 2004/05 contract.

**Related Policies, References:** IGA No. 2005-016-COS; City Procurement Code

**Staff Contact:** Mary O'Connor, Transportation General Manager, 480-312-2334,  
[moconnor@scottsdaleaz.gov](mailto:moconnor@scottsdaleaz.gov)

**9. Engineering Services Contract for Design Guidelines for the Scottsdale Road Corridor, Preliminary Streetscape Design of Scottsdale Road between McKellips and Chaparral Roads, and Downtown Circulation Update**

**Request:** Authorize Engineering Services Contract No. 2005-020-COS with Otak, Inc. for an amount not to exceed \$1,006,175, for the preparation of design guidelines for the 27-mile Scottsdale Road corridor, preliminary design (30 percent drawings) of the Scottsdale Road Streetscape between McKellips and Chaparral Roads, and the preparation of a downtown circulation update.

**Related Policies, References:** This action directly supports the City Council Transportation Goal: strengthen the transportation system for the safe, efficient and affordable movement of people and goods; City Council Environmental Sustainability and Preservation Goal: preserve Scottsdale's desert environment and natural resources, and honor the city's heritage and character; and City Council Neighborhood Goal: enhance and protect a diverse, family-oriented community where neighborhoods are safe, protected from adverse impacts, well maintained and actively revitalized.

Other related policies and references include:

- FY 2004/2005 Capital Improvement Plan
- Scenic Corridor Design Guidelines (February 20, 2003)
- Scottsdale/Tempe North/South Transit Corridor Study (January, 2003)
- ASU/Scottsdale Ad-Hoc Advisory Working Group recommendations

**Staff Contact:** Mary O'Connor, Transportation General Manager, 480-312-2334  
[moconnor@scottsdaleaz.gov](mailto:moconnor@scottsdaleaz.gov)

**10. Intergovernmental Agreement (IGA) with Valley Metro for East Valley Dial-a-Ride Paratransit Service**

**Request:** Adopt Resolution No. 6620 authorizing the acceptance of an eight-year IGA #2005-017-COS with Valley Metro for the provision of East Valley Dial-a-Ride paratransit services. City Council last authorized a five-year agreement in 1999 subject to annual approval. Valley Metro has continued to provide Dial-a-Ride service in anticipation of acceptance of this new IGA. This action continues service with a new eight-year agreement expiring June 30, 2012. The estimated net cost of purchasing paratransit services from Valley Metro for fiscal year 2004/05 is \$989,236.

**Related Policies, References:** IGA #2005-017-COS; City Procurement Code; Code of Federal Regulations

**Staff Contact:** Mary O'Connor, Transportation General Manager, 480-312-2334,  
[moconnor@scottsdaleaz.gov](mailto:moconnor@scottsdaleaz.gov)

**11. Intergovernmental Agreement (IGA) with Valley Metro for Bus Service on Nine Routes Serving Scottsdale**

**Request:** Adopt Resolution No. 6621 authorizing the annual extension of a five-year IGA with Valley Metro for the provision of bus service on nine routes with IGA No. 2005-018-COS. City Council authorized the five-year agreement in 2001. Valley Metro has continued to provide service on the covered routes in anticipation of acceptance of this annual extension.

**Related Policies, References:** IGA #2005-018-COS; IGA #2001-COS-146; City Procurement Code

**Staff Contact:** Mary O'Connor, Transportation General Manager, 480-312-2334, [moconnor@scottsdaleaz.gov](mailto:moconnor@scottsdaleaz.gov)

**12. Police Downtown Radio System Improvements**

**Requests:**

1. Adopt Resolution No. 6649 authorizing Intergovernmental Agreement (IGA) amendment #2000-151A-COS (Maricopa County Agreement NO. C76-01-002-2), and approve expenditures in an amount not to exceed \$25,000 to cover licensing fees (approximately \$20k), and any County time and material costs necessary to implement the Scottsdale enhancements on the County's radio network. The proposed amendment adds another transmitter/receiver site in downtown Scottsdale to improve radio coverage. The Amendment allows the City to retain ownership in the equipment being purchased for the downtown site.
2. Authorize contract NO. 2005-008-COS with Motorola Inc., in the amount of \$388,734.58, to purchase fixed base station radio equipment, installation of the equipment at the Civic Center radio site, and configure the radio system equipment to improve radio coverage in the southern and downtown areas of Scottsdale.

**Related Policies, References:** Intergovernmental Agreement with Maricopa County to provide Police voice radio service to the City of Scottsdale. County IGA # C76.01.002.2

**Staff Contact:** Alan Rodbell, Chief of Police, 312-5310, [arodbell@scottsdaleaz.gov](mailto:arodbell@scottsdaleaz.gov)

**13. Lease Agreement for a Tower Site Lease with Pinnacle Towers LLC**

**Request:** Adopt Resolution No. 6634 authorizing Agreement No. 2005-027-COS with Pinnacle Towers LLC, a Global Signal company, for a tower site lease at 11138 N. 148<sup>th</sup> Street in Fountain Hills for installation of fire radio communication equipment in support of the municipal Fire Department.

**Related Policies, References:**

- Council approved transfer of CIP contingency funding of \$1.2 million to improve radio system infrastructure deficiencies on September 7, 2004.
- Council adopted Resolution 6550 authorizing the City Manager to sign IGA 2004-138-COS with the City of Phoenix to participate in the Phoenix Fire Department Regional Dispatch System and IGA 2004-139-COS initiating City participation in the Central Arizona Life Safety Response System, including Automatic Aid, on September 7, 2004.
- Council approved Contract 2004-155-COS with Communication Services Inc. to complete design and construction of critical fire communications system improvements for the Municipal Fire Department on December 14, 2004.

**Staff Contact:** Al Dreska, Municipal Services General Manager, 480-312-5555, [adreska@scottsdaleaz.gov](mailto:adreska@scottsdaleaz.gov)

**14. Renaming the Scottsdale Center for the Arts**

Consider a recommendation from the Scottsdale Cultural Council Board of Trustees to change the name of the Scottsdale Center for the Arts to the Scottsdale Center for the Performing Arts.

**Related Policies, References:**

- Ordinance 2054: Established a partnership with the Scottsdale Cultural Council
- Agreement #970044 Management Services Agreement with the Scottsdale Cultural Council

**Staff Contact:** John Little, Executive Director, Downtown Group, 480-312-2539, [jlittle@scottsdaleaz.gov](mailto:jlittle@scottsdaleaz.gov)

**15. Time and Attendance Tracking Software**

**Request:** Approve Contract 2005-036-COS with Workforce Software for Integrated Time, Attendance, and Leave Management System, for the purchase of a web-based time and attendance software. Funding in the amount of \$290,000 for this project was approved and made available in the 2004/2005 CIP budget adoption.

**Staff Contact:** Craig Clifford, Financial Services General Manager/CFO, 480-312-2364 [cclifford@ScottsdaleAZ.gov](mailto:cclifford@ScottsdaleAZ.gov)

**16. Reimbursement Resolutions for General Obligation Bond Projects and Municipal Property Corporation Bond-funded Projects**

**Requests:**

1. Adopt Reimbursement Resolution No. 6630 declaring the City's intent to advance funds not to exceed \$75,000,000 for certain General Obligation (G.O.) Bond 2000 projects.
2. Adopt Reimbursement Resolution No. 6635 declaring the City's intent to advance funds not to exceed \$146,000,000 for certain Municipal Property Corporation (MPC) bond-funded projects. The intent of this action is to allow the City to proceed with G.O. Bond 2000 projects and MPC bond-funded projects with existing cash flow and be "reimbursed" by bond proceeds at a later date. By proceeding this way, the City can more accurately "size" the amount of the needed bond issuances and more properly time when the bonds need to be issued resulting in reduced debt service payments by taxpayers. Expected bond sales are planned for Fall 2005 and Spring 2006.

**Related Policies, References:** Resolution No. 6488, dated May 17, 2004, Adopted Financial (Debt) Policies.

**Staff Contact:** Craig Clifford, Financial Services General Manager/CFO, 480-312-2364 [cclifford@ScottsdaleAZ.gov](mailto:cclifford@ScottsdaleAZ.gov)

**17. The Legends At Toscana Rezoning**

**Council to Continue this item to March 22, 2005, per Request of Applicant**

**Location:** 12855 N. 94th Street

**Reference:** 16-ZN-2004

**Staff Contact(s):** Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov); Randy Grant, Chief Planning Officer, 480-312-7995, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)

**Lyle Wurtz**, 6510 E. Palm Lane, 85257, speaking on behalf of Leon Spiro, questioned if homes would be built on this roadway easement.

Mayor Manross clarified this case had originally been continued from February 22 to March 8, 2005 by the Council, but now the applicant had requested a continuance to March 22, 2005.

## **MOTION AND VOTE – CONSENT AGENDA**

COUNCILMAN ECTON MOVED FOR APPROVAL OF CONSENT AGENDA ITEMS 1-17.  
COUNCILMAN LITTLEFIELD SECONDED THE MOTION, WHICH CARRIED 7-0.

## **REGULAR AGENDA        ITEMS 18 - 19**

### **18.    69th Street Abandonment**

#### **Requests:**

1. Abandon the entire 69<sup>th</sup> Street right of way connection between Lowden Road and Wildcat Drive.
2. Abandon five feet of excess right-of-way on the northern border of Lowden Road
3. Abandon the 33-foot-wide Government Land Office (GLO) roadway and utility easement located on:
  - The north and eastern property boundaries of parcel number APN 216-67-080, Land Patent #1193999
  - The north and western property boundaries of parcel number APN 216-67-011, Land Patent #1172908
  - The east and southern property boundaries of parcel number APN 216-67-003-A, Land Patent #1178565
  - The west and southern property boundaries of parcel number APN 216-67-157, Land Patent #1204032
4. Dedicate a five-foot-wide right-of-way dedication along the northern property frontages of parcels, 216-67-080, and 216-67-011.
5. Reserve a twenty-foot-wide water line easement along the western property frontage of parcels, 216-67-011 and 216-67-157.
6. Adopt Resolution No. 6552 vacating and abandoning a public right-of-way.

**Location:** 69th Street between Wildcat Drive and Lowden Road

**Reference:** 11-AB-2004

**Staff Contacts:** Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, [kekblaw@scottsdaleaz.gov](mailto:kekblaw@scottsdaleaz.gov); Randy Grant, Chief Planning Officer, 480-312-7995, [rgrant@scottsdaleaz.gov](mailto:rgrant@scottsdaleaz.gov)

Staff presented a revised Exhibit A, indicating this case will abandon rights-of-way, with the exception of 30 feet along Wildcat Drive on the north, 20 feet along the western portion of Lowden, and 25 feet along the east side of Lowden. Everything else, including existing right-of-way for 69<sup>th</sup> Street, will be abandoned. A reservation will be maintained along 69<sup>th</sup> Street for a 20-foot utility easement. The trails plan shows a trail along Wildcat to be contained within the right-of-way.

Staff further noted this abandonment would not impede any property owners and would have no impact to the existing trail system.

#### **Applicant presentation:**

- A roadway on 69<sup>th</sup> Street and public rights-of-way were not needed.
- The rural desert character will be preserved.
- The desert will be restored.
- These properties will not be fenced as a result of the abandonments.

Mayor Manross opened public testimony.

**John Manes**, 60<sup>th</sup> Street & Dixileta, spoke in opposition to the case, saying this historic trail should not be closed off.

**Jane Rau**, 8148 E. Dale Lane, 85262, noted that the rural overlay took over 20 years and there had not been an opportunity to plan for a trail in that area yet. The desert should be left natural and open.

**Tony Nelssen**, no address given, wondered if the Desert Foothills Character Plan had been reviewed when deciding the case. He further stated that horse trails should be kept far away from traffic.

**Lyle Wurtz**, 6510 E. Palm Lane, 85257, speaking on behalf of Leon Spiro, questioned what type of easement this would be considered: Prescriptive, appurtenant, easement by necessity, or easement in gross?

**Howard Myers**, 6631 E. Horned Owl Trail, 85262, spoke in opposition, saying the right-of-way was needed for connectivity, and connectivity had been blocked in many other areas. He asked Council to consider the public good over the motives of property owners, and not limit options for the future.

Mayor Manross closed public testimony.

Council discussion:

- One of the key recommendations of the Desert Foothills Character Plan was for connectivity between the neighborhood trail systems through open spaces to collector trail systems. It was noted that connectivity was more than just a recreation element, as it also provides access for valid transportation purposes and reduces the need for automobile travel.
- It was recognized that the Desert Foothills Character Plan was not a regulatory document, but to abandon everything in this case would be contrary to that policy.
- Affirmed that these decisions should be based on the same criteria and on a case-by-case basis, affirming that these decisions are not made arbitrarily.

### **MOTION AND VOTE – ITEM 18**

COUNCILMAN OSTERMAN MOVED FOR APPROVAL OF THE REQUESTS OF ITEM 18 (CASE 11-AB-2004) AND ADOPTION OF RESOLUTION 6552. COUNCILMAN ECTON SECONDED THE MOTION, WHICH CARRIED 4-3, WITH VICE MAYOR DRAKE, COUNCILMAN LITTLEFIELD, AND COUNCILMAN MCCULLAGH DISSENTING.

### **19. Disposition of the City-owned Rose Garden Parking Lot**

**Request:** Consider authorization of an Exclusive Right to Negotiate period of 120 days for development of the Rose Garden parking lot as outlined in the City RFP issued in June 2004.

- **Related Policies, References:**
- April 5, 2004 City Council Authorization to issue RFPs for possible development of four downtown parking lots
- Extension of Downtown Fee Reduction Program, adopted April, 2004



- 5th Avenue Parking Structure, contract approval April, 2004
- Canal Bank Improvements, adopted December 8, 2003, Bid Award No. 04PB034
- Specialty Retail District Incentive Program, adopted October, 2003, Resolution No. 6424
- Downtown Fee Reduction Program, adopted January, 2003, Resolution No. 6238
- Economic Vitality Strategic Plan, Approved December, 2002
- Downtown Vision Principles, adopted February, 2002

**Staff Contact:** David Roderique, Economic Vitality General Manager, 480-312-7601, [droderique@scottsdaleaz.gov](mailto:droderique@scottsdaleaz.gov)

A staff presentation reviewed the background of the RFP process, the original criteria approved in April 2004, the proposal by Green Street Properties, the proposal by Rose Garden Partners, similarities of both plans, differences between the two plans, and financial assumptions of each. Staff also provided for options for Council consideration:

1. Make a finding that Rose Garden Partners was most responsive to the RFP.
2. Make a finding that Green Street Properties was most responsive to the RFP.
3. Modify the criteria and do a new RFP.
4. Withdraw the site from development consideration at this time.

Both developers gave presentations outlining their proposals.

Mayor Manross opened public comment.

**Nancy Kinney**, 5507 N. Palo Cristi, Paradise Valley, 85253, spoke in support of Fred Unger (Rose Garden Partners).

**Virginia Korte**, Scottsdale Area Chamber of Commerce, commented on the RFP process and how politics was allowed to intervene. The Chamber supported Mr. Unger's proposal.

**Barbara Bartlett**, 7051 E. Fifth Avenue, 85251, opposed the Rose Garden Partners' proposal and stated her belief that it was unfair. She expressed her concerns that Mr. Unger had an advantage because he owned property on the east side of Goldwater that could be added to the project. She believes the Rose Garden Partners' proposal will take away from her business.

**Crel Vogel**, 7301 E. Third Avenue, #401, 85251, believed the Rose Garden Partners' proposal would complement the area, as Mr. Unger would bring vision and passion to the project.

**Bill Eider-Orley**, no address given, said the criteria for the RFP was right-on, and the Rose Garden Partners' proposal would add charm and character.

**Robert Shields**, 71 Cathedral Lane, Sedona AZ 86336, said he was a huge fan of Fred Unger, stating that Mr. Unger's projects were unique and innovative.

**Michael Merrill**, 8713 E. Vernon Avenue, 85257, believed the city had violated procurement codes and confidentiality laws. He asked city leaders to correct the process.

**Pat Lamer**, 6945 E. Glenrosa, 85251, expressed support for the Fred Unger proposal.

**Janet Harris**, 6939 Fifth Avenue, 85251, spoke in support of the Green Street proposal and urged Council to hold developers to the promises they were making.

**Thomas Irvine**, 1419 N. 3<sup>rd</sup> Street, Phoenix, 85004, representing Floyd Investments, supported the Green Street proposal.

**Beth Brereton**, PO Box 31897, Phoenix, 85076, representing EPM as agent for The Brook Buildings, expressed that Fred Unger's proposal represented more of the RFP criteria and urged action on this item.

**Randy Rochford**, 3316 N. Rose Circle Dr, 85018, believed Fred Unger's project was far superior and incorporated the vision for downtown residential.

**Ron Brock**, 11908 N. 80<sup>th</sup> Place, 85260, said both developers did a fantastic job, but he supported Fred Unger.

**Scott Lyon**, 7305 E. Greenway Road, 85260, representing interests of Hotel Valley Ho, expressed confidence in staff, in Fred Unger, and in his design team.

**Johanna Haver**, 5018 E. Kirkland Road, 85054, said the proposal by Green Street was magnificent, and the architect Benny Gonzalez would draw more people to Scottsdale. She indicated she was not in favor of the underground tunnel mentioned in the Rose Garden Partners' proposal.

**Don Ziebell**, 9290 E. Thompson Peak Parkway, #411, 85255, stated that Mr. Unger was a very reputable developer.

**Peter Kasperski**, 8520 E. Angus Drive, 85251, vouched for Mr. Unger's integrity, describing him as a visionary and a supportive landlord.

Mayor Manross closed public testimony.

Council discussion:

- The Rose Garden Partners' project will not require rezoning if the density is lowered from 38 units to 23.
- The City Attorney provided an opinion that the procurement procedures were not violated.
- It was mentioned that more open space was needed on the canal, and development should not occur to the edge of the canal.
- It was noted that the Council had changed since the criteria for the RFP was developed.
- It was suggested that formulating a new RFP or withdrawing the site from development at this time would be appropriate.

#### **MOTION AND VOTE – ITEM 19**

COUNCILMAN ECTON MOVED TO PROCEED WITH OPTION A (ROSE GARDEN PARTNERS' PROPOSAL). VICE MAYOR DRAKE SECONDED THE MOTION, WHICH CARRIED 4-3, WITH COUNCILMEMBERS LITTLEFIELD, MCCULLAGH, AND OSTERMAN DISSENTING.

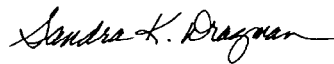
**CITY MANAGER'S REPORT** - None

**MAYOR AND COUNCIL ITEMS** - None

**ADJOURNMENT**

With no further business to discuss, the meeting adjourned at 8:47 P.M.

**SUBMITTED BY:**



**Sandy Dragman**  
Recording Secretary

**REVIEWED BY:**



**Carolyn Jagger**  
City Clerk

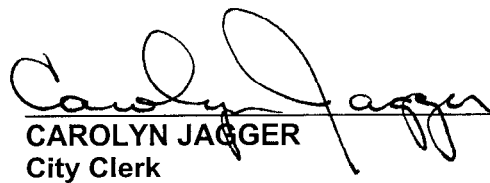
Officially approved by the City Council on April 5, 2005

### CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular Meeting of the City Council of Scottsdale, Arizona held on the 8th day of March 2005.

I further certify that the meeting was duly called and held, and that a quorum was present.

**DATED** this 6th day of April 2005.

  
CAROLYN JAGGER  
City Clerk

-----Original Message-----

**From:** John [mailto:jsaleo@msn.com]

**Sent:** Wednesday, December 29, 2004 9:33 AM

**To:** City Council

**Cc:** Jan Dolan; Joseph Bertoldo

**Subject:** 11AB2004 For The Public Record

**To Be Read Into the Minutes of GLO Patent Easement Abandonment Hearing**

Case: 11-AB-2004

To whom this may concern:

General Land Office (GLO) patent easements for roadway and public utility were created under federal law. There are no provisions in the federal law to abandon said patent easements or remove them from a plat of survey.

The beneficial interest held by the "affected parties" in a patent easement is a private access right and private property right passed on through the deed **perpetually**. To **block, impede, or interfere** with a GLO patent easement is a violation of those rights which has been upheld by the courts, and creates a potential material defect to the title that requires disclosure by the property owner. A standard lender's title insurance policy does not cover the ramifications created by the potential material defect.

To issue a building permit to allow the erection of a permanent structure onto said patent easement is a violation of the federal law and creates a potential liability for the property owner. At some point time, the property owner may have to remove the structures erected onto the GLO patent easement at his expense.

The "affected parties" are all those patentees and/or subsequent owners who own property in that GLO subdivided area, and all **past, present, and future** utility companies.

The city's policy to abandon/revoke "their interest" in any GLO patent easement does not give cause for the city to issue building permits to erect permanent structures onto said patent easements that will block, impede, or interfere with same.

City of Scottsdale may take action regarding the abandonment of "their interest" in GLO patent easement(s) on subject property. The owner's of the subject property, utility companies, and all other "affected parties" should question the validity of that action. In addition, affected parties should question the ramifications of the issuance of a building permit from the City of Scottsdale to erect a permanent structure onto said patent easement(s).

All "affected parties" should reference at least two Arizona lawsuits: **Bernal v Loeks** and **Hampton v Zellman**. In a letter to me dated **January 20, 2004** from the Department of Interior-Solicitor's Office, it states that these two cases are relevant to the treatment of the beneficial interest in patent easements of the "affected parties". It is also mentioned in said letter that these rights are to be enforced. In addition, attached documentation in said letter verifies that patent easements are to remain in perpetuity. (Note: Ms. Bronski, Deputy Assistant City Attorney, has a copy of said letter.)

This information should be given to the applicant and others. This opinion is based on historical information. Each affected party should seek legal advice.

John S. Aleo

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**JOHN ALEO REALTOR**

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